Essex Telcom, Inc.
August 15, 2001

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BEFORE THE ILLINOIS COMMERCE COMMISSION

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COMMUNICATIONS, L.L.C.	**§**	

PREFILED DIRECT TESTIMONY OF MARC WOLENS ON BEHALF OF ESSEX TELCOM, INC.

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COMPLAINT AND REQUEST FOR DISPUTE RESOLUTION OF ESSEX TELCOM INC. AGAINST GALLATIN RIVER COMMUNICATIONS, L.L.C.	**§ § § § §**	**DOCKET NO. 01-0427**

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Q: PLEASE STATE YOUR NAME.

A: My name is Marc Wolens

Q: BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A: I am President of Essex Telcom, Inc. ("Essex").

Q: PLEASE PROVIDE A BRIEF STATEMENT OF YOUR BACKGROUND AND EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

A: I graduated with a double major in Human Spatial Systems and Environmental Geography from the University of Northern Illinois. I have some postgraduate work in microbiology.

I founded Essex Computers in December of 1989 as sole proprietor. It was subsequently incorporated in January 1996. I founded and incorporated Essex Telcom in August 1998. Internet Services of Northern Illinois was spun off from Essex Computers and separately incorporated in January 2001. I am President of each.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A: I am here to provide evidentiary support for Essex Telcom's Complaint and Request for Dispute Resolution Against Gallatin River Telecommunications, Inc. ("Gallatin"). We hope to secure rulings so that we can implement our business plan and begin to provide competitive telecommunications service to Illinois residential customers. In order to implement our business plan we must know the charges that Gallatin will be allowed to recover for calls from its users to our users, and vice versa.

Q: WHAT IS GALLATIN RIVER COMMUNICATIONS, INC.?

A: As I understand it, Gallatin is a Delaware corporation and an incumbent local exchange carrier as defined by the Federal Telecommunications Act of 1997, 47 U.S.C. § 251(h), in certain exchange areas in the State of Illinois.

Q: WHAT IS ESSEX TELCOM, INC.?

A: Essex Telcom is an Illinois corporation, whose principal place of business is at 2 East Third Street, Sterling, Illinois. Essex Telcom is certificated as a local exchange carrier (LEC) in some or all of the Gallatin service areas.

Q: DOES ESSEX TELCOM HAVE AN INTERCONNECTION AGREEMENT WITH GALLATIN?

A: Yes. Essex Telcom entered into an Interconnection Agreement dated December 21, 1999, and effective January 1, 2000, which was approved by the Illinois Commerce Commission. A copy of the Essex Telcom - Gallatin interconnection agreement is attached to my testimony as Exhibit A.

Q: DOES ESSEX TELCOM HAVE INTERCONNECTION AGREEMENTS WITH ANY OTHER ILECS?

A: Yes, with three other ILECs. Essex Telcom has an interconnection agreement with Verizon (the former GTE), which it is in the process of renegotiating, since the underlying agreement that Essex Telcom opted into is expiring. Essex Telcom also has an interconnection agreement with Ameritech, and has an interconnection agreement with Citizens as a result of Citizens' purchase of GTE territory.

Essex Telcom is also in the process of negotiating a new interconnection agreement with Citizens. These four ILECs (Gallatin, Verizon, Ameritech, and Citizens) serve Essex Telcom's proposed service area and adjacent areas.

Q: IS ESSEX TELCOM INTERCONNECTED WITH GALLATIN?

A: Yes, partially as a result of this proceeding, at the Gallatin tandem in Dixon, Illinois. Essex Telcom and Gallatin still have a dispute relating to the cost responsibility for switching and transport on Gallatin's side of the interconnection point ("IP") between Essex Telcom's network and Gallatin's network.

Q: IS ESSEX TELCOM INTERCONNECTED WITH ANY OTHER ILECS?

A: Yes, Essex Telcom is interconnected with Verizon, with an IP in Freeport, Illinois (where it is collocated) and IPs in Dekalb and Rochelle, Illinois. Essex Telcom is also interconnected with Ameritech, with an IP in Sterling, Illinois (where it is collocated). We are not yet interconnected with Citizens, pending our being able to work out an economically viable interconnection arrangement.

Q: CAN YOU BRIEFLY DESCRIBE THE DISPUTE IN THIS PROCEEDING?

A: Yes. Essex Telcom has designated a single IP with Gallatin, as it can under the interconnection agreement. This IP is at the Gallatin tandem in Dixon, Illinois. Essex Telcom has established collocation with Gallatin in Dixon to serve, among other things, as the IP. Essex Telcom's switch is located in Sterling, Illinois.

Essex Telcom desires to provide service to some customers through what Gallatin describes as "Virtual NXX" service – that is, those customers are not physically located in the same rate center as their NXX. Essex Telcom provides the transport and switching between the IP and the customers' physical location.

Gallatin claims it should be able to assess access charges for Gallatin's switching and transport on its side of the IP whenever the calling and called party do not physically reside in the same rate center. Since Essex Telcom does not agree with Gallatin's interpretation, Gallatin originally refused to interconnect and exchange traffic with Essex Telcom, but agreed to do after this complaint was filed.

Q: BRIEFLY, WHAT IS ESSEX TELCOM'S POSITION WITH REGARD TO THIS DISPUTE?

A: I am not a lawyer, but Essex Telcom's position is that (1) the Essex Telcom - Gallatin interconnection agreement allows for a single IP; (2) none of the conditions specified in Section 3.1.4 of the interconnection agreement that justify direct end office terminations or trunking have been alleged by Gallatin; (3) in such a situation, Essex Telcom is entitled to have traffic originating on Gallatin's network and directed to Essex Telcom customers delivered to it at the single Dixon IP; (4) the FCC's rules make it clear that the originating carrier is responsible for the cost of delivering the call to the network of the co-carrier who will terminate the call; (5) in the case of calls originating on

Gallatin's network and directed to Essex Telcom customers, Gallatin is responsible for the cost of delivering that traffic to the IP, while Essex Telcom is responsible for the cost on Essex Telcom's side of the IP; (6) even if the FCC's rules not dictate this result, the FCC's rules at 47 C.F.R. § 51.709(b) provide that if Essex Telcom has any cost responsibility for the cost of transport trunks between each local calling area and the IP, that responsibility is limited to the proportion equal to Essex Telcom's proportion of originating use; and (7) Gallatin cannot impose access charges when a Gallatin user makes a non-toll call to an Essex Telcom customer, or when an Essex Telcom customer makes a non-toll call to a Gallatin customer.

I find it ironic that an ILEC is attempting to charge a CLEC when the CLEC performs a transportation and termination function for that ILEC. My amazement is compounded by the fact that the ILEC – in this case, Gallatin – is attempting to impose access charges. This is particularly disturbing in light of the fact that we should be using bill and keep for much of this traffic as a result of the FCC's *ISP Remand Order*. Instead of reciprocal compensation, we appear to be looking at a *reverse* reciprocal compensation proposal from Gallatin on all traffic, including ISP traffic.

Q: WHAT IS THE ECONOMIC IMPACT OF GALLATIN'S PROPOSAL?

A: It would greatly increase our cost of doing business. As I understand Gallatin's position, Essex Telcom would pay Gallatin as much as $0.004912 per minute of use ($0.002147 Tandem Switching, plus $0.002765 Common Interoffice Transport, according to Gallatin's Response to Essex Telcom Data Request No. 5) for all "Virtual NXX" calls between Gallatin's network and Essex Telcom's, regardless of the direction of the calls.

One of the things Essex Telcom is trying to accomplish is to enable the delivery of high-bandwidth Internet services and telecommunications services to non-metropolitan areas. If this can be accomplished, as we believe, by using what Gallatin refers to as "Virtual NXX" services, it can be done in an economically viable manner.

We believe that the Illinois Commerce Commission has already rejected, in the Focal - Ameritech arbitration, the argument that a CLEC gets a "free ride" on ILEC facilities for FX traffic unless it establishes a POI within 15 miles of each NXX code that

it uses to provide FX service. It held in that case that an ILEC incurs the same costs to deliver a call to a customer that is not physically located in the local calling area of that NXX code as it does to one that is physically located in the local calling area, since it carries the call the same distance and incurs the same transport costs.[1] I agree that the costs are clearly the same in both cases.

The Commission has also ruled, in the Level 3 - Ameritech arbitration that "(w)ith a POI installed in a tandem the issue of the cost of regular and virtual NXX number transport all but disappears."[2] I agree that the cost issue basically disappears. If there is no cost for transport, it is not clear to me why any charges need to be imposed. It is clear that there is no cost difference between local and "Virtual NXX" calls in this instance.

On the other hand, if delivery of these services requires multiple IPs, or involves Essex having to pay Gallatin to terminate calls originated by Gallatin, it seems doubtful that it can be done in an economically viable manner.

Q: IS THERE A DIFFERENCE BETWEEN THE CONCLUSION THE COMMISSION REACHED IN THE LEVEL 3 CASE AND THE ONE YOU PROPOSE IT SHOULD REACH HERE?

A: Yes. In the Level 3 case, the Commission adopted Ameritech's Appendix FGA, because Level 3 had not advised the ICC of the specifics of its objections to the Ameritech proposal. In this case, we object to the imposition of access charges on the calls in question. We point out that, as the Commission has already decided, there is no transport cost involved. We point out that there is no switching cost difference on the ILEC side between local and "Virtual NXX" calls. We propose that "Virtual NXX" traffic be subject to bill and keep.

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[1] *Focal Communications Corporation of Illinois Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket 00-0027, Arbitration Decision (May 8, 2000) at 17-18.

[2] *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket 00-0332, Arbitration Decision (June 30, 2000) at 30. As noted above, the IP is at Gallatin's tandem.

We do not suggest here that the Commission should change its decision in the Level 3 case that a CLEC is not entitled to reciprocal compensation payment for termination of "Virtual NXX" calls, even though the basis for that decision is now suspect as a result of the *ISP Remand Order*. We suggest that all of the "Virtual NXX" traffic between the parties' customers – between ordinary end users, between ISPs, or between the two – should be exchanged on a bill and keep basis. We certainly strongly oppose having to pay Gallatin access charges regardless of the direction of the calls. Gallatin is not entitled to above-cost access payments because this is not exchange access traffic.

Q: WHY DO YOU SAY THAT THE "VIRTUAL NXX" TRAFFIC IS NOT EXCHANGE ACCESS?

A: Again, I am not a lawyer, but my understanding is that exchange access is defined as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." Telephone toll service is "telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service."

Essex' Telcoms "virtual NXX" service is exchange service, it is not "access to exchange service" such as is provided to IXCs; Essex Telcom charges its users the same flat exchange service price. There is no "separate charge." In addition, Essex Telcom has never considered itself to be providing traditional toll, or interexchange service, and did not seek a certificate to provide interexchange services. Essex Telcom is therefore not an IXC. Finally, Essex' Telcoms "virtual NXX" service is not and will not be offered to IXCs; instead it will be an end user offering. Essex Telcom is a local exchange carrier, and our end user services are telephone exchange services. While Essex Telcom will provide exchange access services to IXCs, that merely confirms our status as an LEC. Essex Telcom will not either use or provide exchange access as part of its "Virtual NXX" offering.

Q: WON'T ESSEX TELCOM BE PROVIDING SERVICE TO AN ISP?

A: Yes, a significant portion of our traffic will be "Internet" traffic that is subject to the FCC's ruling in the *ISP Remand Order*. We hope to provide service to non-ISP users

as well, after our network is up and running. The same interconnection facilities will be used. Note, however, that Gallatin is attempting to impose access charges on Essex Telcom for both ISP traffic and non-ISP traffic. We believe Gallatin clearly cannot impose intrastate access charges on Essex Telcom for the "Internet" traffic based on the FCC's recent order. But we are just as emphatic that Gallatin cannot impose access for the non-Internet traffic.

Q: WHAT DO YOU MEAN WHEN YOU SAY THAT ESSEX TELCOM IS RESPONSIBLE FOR THE COST ON ESSEX TELCOM'S SIDE OF THE IP?

A: I mean exactly that. The Essex Telcom switch is in Sterling. Essex Telcom has assumed cost responsibility for the transport trunks that carry traffic between the IP at the Gallatin tandem in Dixon to the Essex Telcom switch in Sterling and the switching and transport out to Essex Telcom customers.

Q: IS ESSEX TELCOM SS7 CAPABLE?

A: Yes. TSI (formerly GTEINS) is Essex Telcom's SS7 provider. Essex Telcom has established SS7 signaling to Ameritech, Gallatin River and Verizon.

Q: WHO ARE ESSEX TELCOM'S CUSTOMERS?

A: Essex Telcom has served Internet Services of Northern Illinois (initially as Essex Computers) as a customer for DSL Services, beginning on July 26, 2000. Other Essex Telcom DSL customers are detailed in responses to Request 1 of Gallatin's data requests, designated as confidential and proprietary information pursuant to the protective order agreed upon by the parties.

Essex Telcom has also acquired Internet Services of Northern Illinois as a customer for switched data services, beginning on July 11, 2001. Essex Telcom has also contracted to provide local exchange services to other customers, detailed in responses to Request 3 of Gallatin's data requests, designated as confidential and proprietary information pursuant to the protective order agreed upon by the parties.

However, the technical requirements necessary to provide service to these contracted customers are not yet in place. They are those listed in the answers to Questions 6 – 18 of Gallatin's data request, and plans for meeting them are detailed in the answers to those questions and below.

Briefly, these include 911 services, voice grade access, dual tone multi-frequency signaling ("DTMF"), single-party service, access to operator services, access to interexchange services, access to directory assistance, toll limitation, compliance with CALEA requirements, the capability to bill end users for local and toll telephone services, and the capability to bill IXCs for interexchange access.

Q: WHY ARE THESE TECHNICAL REQUIREMENTS NOT IN PLACE?

A: The reality in this area is that, for a CLEC with a limited amount of cash to expend, funding has to come from somewhere. In Essex Telcom's case, we are funding expansion into local exchange services with income from DSL and other services. Essex Telcom is, to a large extent, on a "pay as you go" model.

Since we are, to some extent, pushing the envelope in providing new services to our customers (for example, preparing, as we did, to offer DSL services in Gallatin territory when there was no DSL service available), it's important that we do so in as careful a manner as possible, consistent with our overall business plan.

The result is that rather than Essex Telcom springing into life all at once as a full-grown CLEC, it takes some time to fund and begin each phase of our operations, and instead of trying to do everything at once, we try to do things in sequence. In other words, we learn to crawl before we walk, and learn to walk before we run. We began with DSL, as I said, before there were any other DSL providers in the area, moved into switched data services, and are building into voice and traditional "local exchange" services.

An important economic fact in this regard is that the UNE prices we have from Gallatin are higher than those we have from Verizon and Ameritech, and appear to be essentially the same as their prices for retail customers. This means that when we intend to offer a retail service ourselves, we are forced to be extremely careful in our structuring and implementation of the service offering, since high costs make it difficult to turn a profit unless one is extremely careful.

This also dictates that we be very careful about the extent to which we incur costs before we are actually in a position to offer a service profitably, and that we incur no expenses before it makes economic sense for us to do so. I realize that some costs are

inescapable – for instance, we are already paying a considerable sum each month for transport facilities between the Dixon IP and our switch in Sterling even though those facilities are still largely unused, but this seems unavoidable. We are, however, careful not to incur any unnecessary costs or to incur costs any earlier than we have to.

Q: DOES ESSEX TELCOM CURRENTLY PROVIDE VOICE GRADE SERVICES?

A: Not yet. Essex Telcom has a channel bank that allows it to send and receive voice grade services. It is for testing purposes only. It is still in the programming phase, but should provide service by the end of August (providing everything goes well).

Essex Telcom intends to provide voice services to its clientele as soon as it begins to see a payback from selling data services. Essex Telcom has just begun to receive income from data services, and will not jeopardize the business by pursuing other services that are not economically viable as of this time.

Essex Telcom is presently running one way trunks back from its switch to ILECs so that Essex Telcom voice clients can reach customers of other ILECs. Our work on this should be completed by the end of August, leaving the trunk ready for Gallatin to finish the connection process.

Q: DOES ESSEX TELCOM CURRENTLY PROVIDE LOCAL USAGE, DTMF, AND SINGLE PARTY SERVICE?

A: Not yet. It has been only about a month since Essex Telcom has been able to pass traffic.

Q: DOES ESSEX TELCOM CURRENTLY PROVIDE 911 SERVICES?

Essex Telcom is in the last stages of preparation to provide Enhanced 911 Services. The only part left to do is to test the 911 service from Essex Telcom's office. This will be done as soon as the Channel Bank is configured. Essex Telcom is connected through the Ameritech Routers to the PSAP in Rock Island, IL.

Q: DOES ESSEX TELCOM CURRENTLY PROVIDE ACCESS TO OPERATOR SERVICES?

A: Not yet. Essex Telcom has plans to investigate its options for providing operator services and directory assistance, as well as toll limitation. However, this investigation, as

well as implementation, is delayed because time is still being spent on interconnecting with ILECs.

Q; DOES ESSEX TELCOM CURRENTLY PROVIDE ACCESS TO OPERATOR SERVICES, DIRECTORY ASSISTANCE, AND TOLL LIMITATION?

A: Not yet. Essex Telcom has plans to investigate our options for providing operator services and directory assistance, as well as toll limitation. However, this investigation, as well as implementation, is delayed because time is still being spent on interconnecting with ILECs.

Q: DOES ESSEX TELCOM CURRENTLY PROVIDE ACCESS TO INTEREXCHANGE SERVICE?

A: Not yet. Essex Telcom plans to establish IXC trunk groups to ILECs as a part of resolving interconnection issues.

Q: HAS ESSEX TELCOM IMPLEMENTED PROCEDUES TO BE COMPLIANT WITH CALEA PROCEDURES?

A: Not yet. Essex Telcom is presently working on implementing procedures to be CALEA compliant.

Q: DOES ESSEX TELCOM PRESENTLY HAVE TO CAPABILITY TO BILL END USERS FOR LOCAL AND TOLL TELEPHONE SERVICES?

A: Not yet. This is another area where it does not seem financially responsible to run before you can walk. The actual provision of these services must come first. Essex Telcom is still evaluating its options, including "backoffice" services from 3rd party vendors.

Q: DOES ESSEX TELCOM HAVE THE CAPABILITY TO BILL IXCS FOR INTEREXCHANGE ACCESS?

A: Not yet. Again, it is a question of timing. Essex Telcom is still evaluating billing options, and is in the process of preparing tariffs which will afford the presumptions available through the FCC's "Safe Harbor" rules.

Q: IS ESSEX TELCOM'S SWITCH LNP CAPABLE?

A: Yes.

Q: WHAT IS THE OWNERSHIP RELATIONSHIP BETWEEN ESSEX TELCOM AND INTERNET SERVICES OF NORTHERN ILLINOIS, INC.?

A: None. Essex Telcom and Internet Services of Northern Illinois are separate corporations, and neither owns any part of the other. I am the sole shareholder and the president of both companies.

Q: ESSEX TELCOM APPEARS TO HAVE VERY FEW CUSTOMERS, AND SEEMS TO BE STILL A WAYS OFF FROM OFFERING THE FULL SERVICES ONE MIGHT EXPECT FROM A LOCAL EXCHANGE CARRIER. CAN YOU EXPLAIN THIS?

A: Yes. It has taken roughly 33 months for Essex Telcom to get to the position where it now is, in large part because we have had to deal with so many (4) ILECS in order to be able to provide services to our customers. As an example, we have only in the last month, as a result of this proceeding, achieved interconnection with Gallatin so that we could begin to pass traffic. As you can imagine, it's more than a little difficult to sign up customers until you can pass their traffic to and from them.

In order to remain solvent, Essex Telcom has to do things in stages, which it is doing. In February 1999, when testimony was given for Essex Telcom's certification by the Illinois Commerce Commission, we testified that it would take 18 months after the Essex Telcom network was up and running to offer voice services. Essex Telcom has 17 months still to go to live up to that statement. We hope to beat that estimate, but will not rush to deploy everything, everywhere, all at once. We have all seen the fate of those CLECs that chose that strategy.

Q: DOES THIS COMPLETE YOUR TESTIMONY AT THIS TIME?

A: Yes. Thank you.